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File No.: 104884

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Randy G. Taylor,

Plaintiff,

vs.

Feral Children Productions LLC,

Defendant.

Docket No:

COMPLAINT

Randy G. Taylor ("Taylor") (hereinafter collectively referred to as "*Plaintiff*"), by and through its undersigned counsel, for their Complaint against Defendant Feral Children Productions LLC (hereinafter collectively referred to as "*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover for copyright infringement. Plaintiff herein is an artistic photographer and photojournalist who created and owns the rights to photographs featuring celebrities and newsworthy events which he licenses to online and print media publications. Plaintiff has obtained U.S. copyright registrations covering many of his photographs, including the photographs at issue in this litigation.

2. Defendant owns and operates a website known as www.beautifuldecay.com (the website is also referred to herein as the "*Websites*") and, without permission or

1 authorization from Plaintiff actively copied, stored, modified, and/or displayed Plaintiff's
2 photographs on the Websites without permission or authorization from Plaintiff and engaged
3 in this misconduct knowingly and in violation of the United States copyright laws.

4 **JURISDICTION AND VENUE**

5
6 3. This Court has subject matter jurisdiction over the federal copyright
7 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8 4. Additionally, this Court has subject matter jurisdiction over all of the
9 photographs, inclusive of any unregistered images. *Reed Elsevier, Inc. v. Muchnick*, 559 U.S.
10 154, 130 S.Ct. 1237 (2010), *see e.g. Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146,
11 1154 99th Cir. 2007); *Olan Mills, Inc. v. Linn Photo Co.*, 23 F.3d 1345, 1349 (8th Cir. 1994);
12 *Pac. & S. Co., Inc., v. Duncan*, 744 F.2d 1490, 1499 n. 17 (11th Cir. 1984).

13 5. This Court has personal jurisdiction over Feral Children Productions LLC
14 because Feral Children Productions LLC is a New York limited liability company with a
15 registered agent for service of process in Nassau, New York.

16 6. Venue is proper under 28 U.S.C. §1391(a)(2) because Feral Children
17 Productions LLC does business in this Judicial District and/or because a substantial part of the
18 events or omissions giving rise to the claim occurred in this Judicial District.

19 **PARTIES**

20 **I. Plaintiff**

21 7. Plaintiff Taylor is an individual who is a citizen of the State of New York and
22 maintains a principal place of business in Kings County, New York
23

24 **II. Defendant**

25 8. On information and belief, Defendant Feral Children Productions LLC, is a
26 New York Limited Liability Company with a registered agent to accept service of process
27 located in Nassau County, New York.

28 9. The Website is a popular and lucrative enterprise that purposefully displays
29 artistic photographs, including Plaintiff's copyrighted photographs.
30

31 10. The Websites are monetized in that it sells merchandise to the public and, on
32 information and belief, Defendant profits from these activities.

1 11. Without permission or authorization from Plaintiff, Defendant volitionally
2 selected, copied, modified, stored and/or displayed Plaintiff's copyright protected
3 photographs (hereinafter collectively referred to as "*Photographs*"), as set forth in Exhibit "1"
4 which is annexed hereto and incorporated in its entirety herein, on the Website.

5 12. On information and belief, the Photographs were copied, modified, stored
6 and/or displayed without license or permission, thereby infringing on their copyrights
7 (hereinafter collectively referred to as the "*Infringements*").

8 13. As is set forth more fully in Exhibit "1", each listed Infringement contains the
9 URL ("*Uniform Resource Locator*") for a fixed tangible medium of expression that was
10 sufficiently permanent or stable to permit it to be communicated for a period of more than
11 transitory duration and therefore constitutes a specific item of infringement. *17 U.S.C.*
12 *§106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).

13 14. Each listed infringement in "Exhibit 1" is an exact copy of Plaintiff's original
14 image that was directly copied and stored by Defendant on the Website.

15 15. Each infringement listed in "Exhibit 1" constitutes a separate and distinct act
16 of infringement by Defendant.

17 16. On information and belief, Defendant takes an active and pervasive role in the
18 content posted on its Website, including, but not limited to copying, posting, selecting,
19 commenting on and displaying Plaintiff's Photographs.

20 17. *17 U.S.C. §512*, also known as the Digital Millennium Copyright Act
21 ("*DMCA*") provides a defense against an infringement that is "by reason of the storage at the
22 direction of a user." The applicable legislative history provides that "[i]nformation that
23 resides on the system or network operated by or for the service provider through its own acts
24 or decisions and not at the direction of a user does not fall within the liability limitation of
25 subsection (c)." *See S.Rep. No. 105-190*, at 43 (1998).

26 18. Defendant's conduct is not safe harbored by DMCA, in that, on information
27 and belief, Defendant has failed to register with the United States Copyright Office pursuant
28 to *17 U.S.C. §512*.

29 19. None of the Infringements were posted at the direction of a "user" as that term
30 is defined in *17 U.S.C. §512(c)*.

31 20. On information and belief, Defendant was aware of facts or circumstances
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1 from which the determination regarding the Infringements was apparent. Defendant cannot
2 claim that it was aware of the infringing activities, including the specific Infringements which
3 form the basis of this complaint, since such a claim would amount to only willful blindness to
4 the Infringements on the part of Defendant.

5 21. On information and belief, Defendant engaged in the Infringements knowingly
6 and in violation of applicable United States Copyright Laws.

7 22. Further, Defendant has the legal right and ability to control and limit the
8 infringing activities on its Website and exercised and/or had the right and ability to exercise
9 such right, which, on information and belief, is evidenced by the following:

10 (a) Defendant's Employees had complete control over and actively reviewed and
11 monitored the content posted on the Website.

12 23. On information and belief, Defendant has received a financial benefit directly
13 attributable to the Infringements. Specifically, by way of the Infringements, the Website had
14 increased traffic to the and, in turn, realized an increase its merchandise sales. *17 U.S.C.*
15 *§512(c)(1)(B)*.

16 24. On information and belief, a large number of people have viewed the unlawful
17 copies of the Photographs on the Website.

18 25. On information and belief, Defendant at all times had the ability to stop the
19 reproduction and display of Plaintiff's copyrighted material.

20 26. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

21
22 **FIRST COUNT**

23 *(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)*

24 27. Plaintiff repeats and incorporates by reference the allegations contained in the
25 preceding paragraphs, as though set forth in full herein.

26 28. The Photographs are original, creative works in which Plaintiff owns valid
27 copyright properly registered with the United States Copyright Office.

28 29. Plaintiff has not licensed Defendant the right to use the Photographs in any
29 manner, nor has Plaintiff assigned any of its exclusive rights in the Copyrights to Defendant.

30 30. Without permission or authorization from Plaintiff and in willful violation of
31 their rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
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1 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff
2 thereby violating one of Plaintiff's exclusive rights in its copyrights.

3 31. Defendant's reproduction of the Photographs and display of the Photographs on
4 the Websites constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural*
5 *Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

6 32. On information and belief, thousands of people has viewed the unlawful copies
7 of the Photographs on the Website.

8 33. As a direct and proximate result of Defendant's misconduct, Plaintiff has been
9 substantially harmed and should be awarded statutory damages against Defendant pursuant to
10 17 U.S.C. §504(c) of up to \$150,000 per infringement in an amount to be proven at trial.

11
12 **SECOND COUNT**
(Vicarious Copyright Infringement)

13 34. Plaintiff repeats and incorporates, as though fully set forth herein, each and
14 every allegation contained in the preceding paragraphs, as though set forth in full herein.

15 35. At all material times hereto, on information and belief, Defendant had the right
16 and ability to supervise and/or control the infringing conduct of its Employees, Agents and
17 members, and declined to exercise the right and ability to supervise or control that infringing
18 conduct, despite its legal right to stop or limit the directly infringing conduct as well as the
19 practicable ability to do so.

20 36. For example, on information and belief, Defendant had the practicable ability
21 to police the images on the Website when its Employees edited, modified and/or interacted
22 with the Photographs, and therefore had the right and ability to supervise and control the
23 infringing Photographs.

24 37. As a direct and proximate result of such refusal to exercise its right to stop or
25 limit the infringing conduct, on information and belief, Defendant's members has continued to
26 infringe upon Plaintiff's Photographs, which in turn generates profits for Defendant directly
27 from the use of the Infringements.

28 38. On information and belief, Defendant enjoyed a directed financial benefit from
29 the infringing activity of its members, Employees and agents from, inter alia, merchandise
30 sales revenue the increased traffic to its Website.

31 39. Accordingly, Defendant is liable as vicarious infringers since they profited
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1 from direct infringement while declining to exercise a right to stop or limit it. *See*
2 *e.g.*, *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d. 1146, 1171 (9th Cir. 2007); *Metro-*
3 *Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929-30 (2005).

4 40. As a direct and proximate result of Defendant's misconduct, Plaintiff has been
5 substantially harmed and should be awarded statutory damages against Defendant pursuant to
6 17 U.S.C. §504(c) of up to \$150,000 per infringement in an amount to be proven at trial.

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8 **THIRD COUNT**
9 ***(Injunction Pursuant to 17 U.S.C. §502)***

10 41. Plaintiff repeats and incorporates, as though fully set forth herein, each and
11 every allegation contained in the preceding paragraphs, as though set forth in full herein.

12 42. Plaintiff requests a permanent injunction pursuant to 17 U.S.C. §502(a)
13 prohibiting Defendant from displaying the Infringements.

14 **FOURTH COUNT**
15 ***(Attorney Fees and Costs Pursuant to 17 U.S.C. §505)***

16 43. Plaintiff repeats and incorporates, as though fully set forth herein, each and
17 every allegation contained in the preceding paragraphs, as though set forth in full herein.

18 44. Plaintiff requests, pursuant to 17 U.S.C. §505, their attorney fees and costs for
19 the prosecution of this action.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

22 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's
23 rights to the Photographs in violation of 17 U.S.C. §501 et seq. and award damages and
24 monetary relief as follows:

- 25 a. Statutory damages against Defendant pursuant to 17 U.S.C. §504(c) of up
26 to \$150,000 per infringement or in the alternative Plaintiff's actual damages
27 and the disgorgement of Defendant' wrongful profits in an amount to be
28 proven at trial; and
29
30 b. A permanent injunction against Defendant pursuant to 17 U.S.C. §502; and
31
32 c. Plaintiff's attorneys' fees pursuant to 17 U.S.C. §505; and

- 1 d. Plaintiff's costs; together with
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3 e. Such other relief that the Court determines is just and proper.
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5 DATED: February 9, 2014

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